

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TONY AVEYARD,	:	Case No. 1:12-cv-271
9169 Kenwood Rd.,	:	
Cincinnati, Ohio 45242	:	Judge _____
Plaintiff,	:	
v.	:	
METROPOLITAN LIFE INSURANCE	:	
COMPANY	:	
312 Elm Street Suite 1485,	:	
Cincinnati, Ohio 45202	:	
	:	
SIEMENS CORPORATION SHORT	:	
TERM DISABILITY PLAN	:	
1300 East Ninth Street,	:	
Cleveland, Ohio 44114	:	
	:	
SIEMENS CORPORATION LONG	:	
TERM DISABILITY BENEFITS	:	
CORPORATE PLAN	:	
1300 East Ninth Street,	:	
Cleveland, Ohio 44114	:	
Defendants.	:	

COMPLAINT

Plaintiff, Tony Aveyard, for his Complaint against the Defendants, Metropolitan Life Insurance Company, Siemens Corporation Short Term Disability Plan (the “STD Plan”), and Siemens Corporation Long Term Disability Benefits Corporate Plan (the “LTD Plan”), states as follows:

1. Plaintiff is an individual residing in Hamilton County, Ohio who, at all times relevant to this action, was a participant in the STD Plan and LTD Plan, both of which are

employee benefit plans sponsored by his employer, Siemens Corporation (“Siemens”). The STD Plan is administered by Defendant, Metropolitan Life Insurance Company (“Metlife”) but funded by Siemens. The LTD Plan is administered and funded through an insurance policy issued by the Defendant, Metlife.

2. Defendant, Metlife, is a foreign company authorized to transact business in Ohio, and it acted as plan administrator and/or fiduciary of the Plans. Metlife may be served at its office at 312 Elm Street Suite 1485, Cincinnati, Ohio 45202.

3. Defendant, the STD Plan, is an employee benefit plan as defined by ERISA. The STD Plan may be served through the STD Plan’s agent, which is Siemens, and can be served on Siemens’s agent at CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114.

4. Defendant, the LTD Plan, is an employee benefit plan as defined by ERISA. The LTD Plan may be served through the LTD Plan’s agent, which is Siemens, and can be served on Siemens’s agent at CT Corporation System, 1300 East Ninth Street, Cleveland, Ohio 44114.

5. Plaintiff brings this action under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), to recover benefits and to clarify his rights to future benefits under the Plans. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331 and 29 U.S.C. §1132(e) and may assert personal jurisdiction over Defendants because they undertook to insure or sponsor an ERISA plan that affected participants living in this district.

Claim for Relief

6. The STD and LTD Plans provide for the payment of disability benefits to Plan participants who become “disabled” as defined in the Plans. Benefits under the STD Plan are paid by Siemens, while benefits under the LTD Plan are paid by MetLife.

7. Plaintiff became disabled as defined under the Plans on or about October 25, 2010 and has remained continuously disabled since then. Metlife paid benefits under the STD Plan in the amount, net of “other income” offsets, of \$1,200/week to the Plaintiff beginning on or about November 1, 2010 through April 17, 2011.

8. Metlife denied the Plaintiff’s claim for monthly benefits under the LTD Plan on or about May 5, 2011 and on May 10, 2011 Metlife discontinued Plaintiff’s monthly benefits under the STD Plan beyond April 17, 2011, approximately two weeks before benefits would have began under the LTD Plan.

9. Plaintiff made timely claims for continued benefits under the STD and for benefits under the LTD Plan, and forwarded to Metlife medical records from his treating physicians, and all other documentation needed by Metlife to assess his claims for benefits.

10. Plaintiff requested a review of the denial of the claims for continued benefits under the STD Plan and for benefits under the LTD Plan, but Metlife continued to deny the claims. Metlife’s denials constitute a breach of its obligation under the Plan and ERISA to pay benefits to the Plaintiff, and the Plaintiff has exhausted all administrative remedies set forth in the Plan and required by ERISA.

11. Metlife’s decision to deny Plaintiff’s claim under the Plans was made under a conflict of interest, in that Metlife was deciding whether to expend its own funds to pay the claims, and this conflict of interest must be weighed in the review of Metlife’s denial of the claims.

12. As a result of the foregoing, Plaintiff has suffered losses in the form of unpaid benefits of at least \$1,280/week less any set-offs described in the Policies beginning on April 17, 2011 and continuing for as long as he remains disabled under the Plan.

13. Plaintiff is entitled to a judgment against Metlife and the Plans in the amount of the unpaid benefits under the Plan, as well as an order requiring the LTD Plan to pay benefits to him for as long as he remains disabled under the Plan. The Plaintiff is further entitled to prejudgment interest and an award of attorneys' fees under ERISA § 502(g) in an amount to be proven.

WHEREFORE, Plaintiff, Tony Aveyard, requests the Court grant him the following relief from Defendants, The Metropolitan Life Insurance Company, Siemens Corporation Short Term Disability Plan, and Siemens Corporation Long Term Disability Benefits Corporate Plan:

- (a) a judgment in the amount of all his past-due benefits under the Plans;
- (b) an order requiring the defendant and/or the Plans to pay his benefits for as long as he remains disabled;
- (c) his costs and attorney's fees; and
- (d) all other relief to which he is entitled, including a *de novo* review of the decision to deny the claim and that he be reinstated as a participant to any other employee benefit plans to which he may be eligible due to his disability.

s/ Claire W. Bushorn
David M. Cook (#0023469)
Claire W. Bushorn (#0087167)
COOK, PORTUNE & LOGOTHETIS LLC
22 West Ninth Street,
Cincinnati, Ohio 45202
Phone: (513)721-0444
Fax: (513) 721-1178
dcook@econjjustice.com
cbushorn@econjjustice.com
Trial Attorneys for Plaintiff